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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Jonathan Behar, Trustee of the Estate }
9 of Brandon Truaxe, }
10 Plaintiff, }
11 vs. }
12 Cutter Southwest Aircraft Sales LLC, }
13 et al., }
14 Defendants. })

ORDER

15 Before the Court is Plaintiff Jonathan Behar’s Application for Reimbursement of
16 his Attorneys’ Fees and Costs (the “Application”). (Doc. 17) As follows, the application
17 will be granted.

18 On September 13, 2019, Defendants filed a Notice of Removal, removing this
19 matter from state to federal court. (Doc. 1) On September 19, 2019, Plaintiff filed a Motion
20 to Remand (Doc. 12) and on September 24, 2019, Defendants filed a Motion to Withdraw
21 the Notice of Removal. (Doc. 13) Following briefing on the issue of removal and remand,
22 the Court remanded the matter to state court and ordered Plaintiff to file an application for
23 attorneys’ fees and costs related solely to the issue of removal and remand pursuant to 28
24 U.S.C. § 1447(c). (Doc. 16 at 3) Plaintiff filed such application (Doc. 17) and Defendants
25 responded with several arguments against the application (Doc. 19) to which Plaintiff
26 replied (Doc. 21).

27 The Court has already found that Plaintiff is entitled to recover “just costs and any
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1 actual expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. §
2 1447(c). (Doc. 16 at 2–3) The Court has considered Defendants’ arguments opposing the
3 Application and finds they lack merit. It will summarily address those arguments below.

4 **1. Rule 54.2**

5 Local Rule 54.2 applies to applications for attorneys’ fees and related non-taxable
6 expenses in this District. There are several exceptions to the application of the rule, and
7 one is dispositive of Defendants’ argument on this issue: rule 54.2 does not apply “to claims
8 for attorneys’ fees and related non-taxable expenses which may be recoverable as an
9 element of damages.” LRCiv 54.2(a). The Court ruled that Plaintiff was entitled to recover
10 fees and expenses because the removal was improper, and Defendants lacked an objective
11 reasonable basis for removal. (Doc. 16 at 2) The purpose of 28 U.S.C. 1447(c) is to provide
12 compensation to the plaintiff when removal was improper, causing plaintiff to incur
13 attorneys’ fees and related expenses in opposing the removal. It is a deterrent for improper
14 removals. Awarding the attorneys’ fees and related non-taxable expenses is therefore an
15 element of damages created to make plaintiff whole. Accordingly, Local Rule of Civil
16 Procedure 54.2 is not applicable to Plaintiff’s Application.

17 **2. Pro Hac Vice Admissions and Recovery of Fees**

18 Defendants next argue that the fees charged by Plaintiff’s California attorneys from
19 Pepper Hamilton, LLP cannot be recovered because “decisional law is clear that fees are
20 not recoverable under the circumstances where fees are claimed by firms which are not
21 counsel of record, as here.” (Doc. 19 at 4–5) The Court does not find this argument
22 persuasive. Indeed, the two Pepper Hamilton attorneys who submitted fees as part of the
23 application were admitted *pro hac vice* by the Court on October 24, 2019. Furthermore,
24 the cases cited by Defendants involved attorneys who were never admitted at all, *pro hac*
25 *vice* or otherwise, and some of them were not even in good standing in their original
26 jurisdiction of practice. This is not the case here as the Pepper Hamilton’s attorneys
27 complied with all requirements to be admitted *pro hac vice* by the Court and were so
28 admitted. Accordingly, the Court finds that their fees are recoverable by Plaintiff.

3. Reasonableness of fees

Defendants' counsel finally argue that the whole process of fighting the removal should have taken Plaintiff's counsel four hours and that Defendants bill \$315.00 per hour for partners which means that the fee award should be \$1,260. (Doc. 19 at 5) The Court finds this argument unconvincing and odd. It is true that one basis for the award calculation is the hourly rate charged by attorneys and whether it is reasonable taking into account various factors such as experience and location of practice. The fact that Defendants' attorneys bill at this rate does not negate that the hourly rates set forth by Plaintiff's counsels are reasonable. There is no rule that the rates should be equal or set by what defense counsel bills. The Court finds that the hourly rate charged by Plaintiff's counsel are reasonable. Furthermore, the Pepper Hamilton attorneys are based on California where rates are substantially higher than Arizona. Having reviewed the parties' filings, the Court concludes that \$14,123.35 is the total amount of fees and costs incurred as a result of removal.

Accordingly,

IT IS ORDERED that the Application for Award of Attorneys' Fees and Costs (Doc. 17) is **granted**.

IT IS FURTHER ORDERED that Jonathan Behar is awarded \$14,077.00 in fees and \$46.35 in costs pursuant to 28 U.S.C. § 1447(c).

IT IS FURTHER ORDERED that the Clerk of Court shall terminate this case.

Dated this 26th day of March, 2020.


Honorable Steven P. Logan
United States District Judge